THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

R.S.A. No. 2223 of 2006

Date of Decision: 12 -10 - 2006

Ex.ASI Teja Singh **.....Appellant**

v.

Superintendent of Police, Ludhiana and others **.....Respondent**

CORAM: HON'BLE MR.JUSTICE P.S.PATWALIA

***

Present: Mr.D.K.Bhatti, Advocate
for the appellant.

***

P.S.PATWALIA, J.

Plaintiff has filed this regular second appeal against concurrent findings recorded by the Courts below dismissing the suit filed by the him. While the trial Court has dismissed the suit on merits as also being barred by limitation, the lower Appellate Court has dismissed the first appeal affirming the findings of the trial Court that the suit was barred by limitation. The plaintiff was aggrieved by order dated 3.4.1999 vide which he had been dismissed from service after dispensing with the enquiry under Article 311(2)(b) of the Constitution of India by the Senior Superintendent of Police, Ludhiana. He filed an appeal against the said order which was dismissed on 28.6.1991 by the Deputy Inspector General of Police, Patiala Range, Patiala. He thereafter filed a revision against the said order and the same was also dismissed by order dated 4.12.1991 passed by the Inspector General of Police, Punjab. He thereafter filed a further revision/petition before the State of Punjab which was also dismissed on 15.3.1993. Thereafter the plaintiff

filed yet another mercy petition on 13.8.1996 before the Deputy Inspector General of Police, Ludhiana Range, Ludhiana which was dismissed on 17.12.1996 and the said order was received by the plaintiff on 9.1.1997. The plaintiff filed a suit challenging the aforesaid orders on 18.2.2000.

The lower Appellate Court has held as hereunder:-

"17. In the present case the revision petition was filed by the plaintiff before the Inspector General of Police, Punjab, which was dismissed by him vide order dt. 4.12.1991 Ex-P4. Thereafter revision petition was also filed by the plaintiff before the Govt. of Punjab and the same was dismissed by it vide order dt. 15.3.1993. Under rule 16.32 of the rules mercy petition could be filed before the Inspector General of Police, Punjab, within a period of one month only. In this case mercy petition was filed by the plaintiff before the Deputy Inspector General of Police, Ludhiana Range, Ludhiana. The said mercy petition was filed by him on 13.8.1996. Under the rules, there was no provision for preferring an appeal before the Govt. of Punjab as was done by the plaintiff in this case. The mercy petition was filed by the plaintiff on 13.8.1996 before Deputy Inspector General of Police, Ludhiana Range, Ludhiana, though the same could be filed by him only before Inspector General of Police as prescribed under rule 16.32. This mercy petition was filed by the plaintiff on 13.8.1996 after the dismissal of his revision petition vide order dt. 4.12.1991 Ex-P4. There was no provisions under the rules for filing of mercy petition before Deputy Inspector General of Police, Ludhiana Range, Ludhiana after dismissal of the appeal of the plaintiff by Inspector General of Police vide order dt. 4.12.1991. Since no statutory remedy was provided for filing of mercy petition before the Deputy Inspector General of Police, after the dismissal of the appeal by Deputy Inspector General of Police, Patiala range, Patiala, vide order dt. 28.6.1991, the plaintiff could not get any benefit from the fact that his mercy petition was dismissed on 17.12.1996 and the same was conveyed to him on 9.1.1997. In support of this vide I draw support from the observations made in AIR 1990 Supreme Court 10, S.S.Rathore Vs. Madhya Pradesh.

18. After the dismissal of his revision petition vide order dt. 4.12.1991, passed by the Inspector General of Police Ex_P4, the

mercy petition which was filed by him on 17.12.1996 was patently barred by limitation. The plaintiff could not take the plea that the present suit was within limitation as the same was filed within a period of three years and two months from 9.1.1997 when the order dt. 4.12.1991 was received by him. The present suit which was filed by the plaintiff on 18.2.2000 was patently barred by limitation."

In view of the aforesaid finding, the suit of the plaintiff was dismissed on the ground of limitation.

I have heard learned counsel for the appellant and perused the paperbook. I am of the opinion that in the present case the suit of the plaintiff was clearly barred by limitation. After the order of dismissal was passed on 3.4.1990, the plaintiff had filed an appeal which was rejected on 28.6.1991. He thereafter filed a revision which was rejected on 4.12.1991. After that he preferred yet another revision before the State of Punjab which was also rejected on 15.3.1993. At the very latest the limitation would have to be taken from this date. Merely because subsequently a mercy petition/revision was filed by the plaintiff would not give him any further cause of action as the same was not a statutory appeal/revision. Therefore, I concur with the view taken by the lower Appellate Court that the suit filed by the plaintiff was barred by limitation. Hence, I find no substantial question of law arising for determination in this appeal and the same is consequently dismissed.

(P.S.PATWALIA)
JUDGE

October 12, 2006.

RC